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No. 612

IN THE

SUPREME COURT OF THE UNITED STATES

PAUL KAISER, *Individually and as Representative of* INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 295 *and* R. L. WEBB, *Individually and as Representative of* INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS ..... *Petitioners*

v.

PRICE-FEWELL, INC. ..... *Respondent*

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS

PETITIONERS' REPLY TO BRIEF IN OPPOSITION

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PARAGON PRINTING CO., LITTLE ROCK

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PETITIONERS' REPLY TO BRIEF IN OPPOSITION

Respondent seeks to avoid certiorari by asserting that Federal questions were not raised in the State Court. This argument is made notwithstanding that the record reflects that the Motion to Dissolve Restraining Order filed contemporaneously with the Answer in the trial court states "the pickets enjoined and restrained by said restraining order are legal pickets asserting their constitutional right of free speech" and the statement in the Answer that the pickets were "in furtherance of the

constitutional right of said employees to inform the public of their labor dispute". The constitutional guaranties asserted in the trial court were necessarily the guaranties of freedom of speech by the Federal Constitution.

The question submitted here is primarily concerned with the supremacy of Federal law over State law as interpreted for the first time by the State Supreme Court. Until the State Supreme Court interprets a State Statute or State Law, in a manner conflicting the Federal Law the supremacy clause of the Federal Constitution cannot be invoked. Under these circumstances, the supremacy clause may appropriately be raised for the first time in a petition for rehearing in the State Supreme Court. Where a State statute is adjudged to mean one thing for some cases and another thing for others, the objection cannot be made in advance of the event. *Great Northern R. Co. v. Sunburst Oil & Refining Co.* 287 U.S. 358, 53 S.Ct. 145, 77 L.Ed. 360.

On November 21, 1962, this Honorable Court granted certiorari in the case of *Retail Clerks' Local 1625 v. Schermerhorn* No. 368 on this Court's docket. The question in that case is whether Section 14(b) of the National Labor Relations Act authorizes States to prohibit and regulate agency shop agreements which do not require "membership" in labor unions. One of the questions in the present case is whether Arkansas Right to Work Laws, as interpreted by the Arkansas Supreme Court, exceeds the authority granted to the States under Section 14(b) to ban or regulate agreements requiring "membership" in a labor organization. The Arkansas interpretation bans affiliation which petitioner asserts is beyond the power of the State of Arkansas under Section 14(b).

It should be noted that certiorari was not granted in Schermerhorn until the present petition for certiorari was in transit to the Court.

Respectfully submitted,

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